

Section 14. Chapter 17.48 of the Kern County Ordinance Code is hereby repealed and a new Chapter 17.48 is hereby added to read as follows:

Chapter 17.48 FLOODPLAIN MANAGEMENT

Sections:

Article I. General Provisions

<u>17.48.010</u>	Statutory authorization.
<u>17.48.020</u>	Short title.
<u>17.48.030</u>	Findings of fact.
<u>17.48.040</u>	Statement of purpose.
<u>17.48.050</u>	Methods of reducing flood losses.
<u>17.48.060</u>	Definitions.
<u>17.48.070</u>	Lands to which this chapter applies.
<u>17.48.080</u>	Basis for establishing the areas of special flood hazard.
<u>17.48.090</u>	Compliance.
<u>17.48.100</u>	Abrogation and greater restrictions.
<u>17.48.110</u>	Interpretation.
<u>17.48.120</u>	Warning and disclaimer of liability.
<u>17.48.130</u>	Severability.

Article II. Administration

<u>17.48.140</u>	Establishment of development permit.
<u>17.48.150</u>	Fees.
<u>17.48.160</u>	Designation of the floodplain administrator.
<u>17.48.170</u>	Duties and responsibilities of the floodplain administrator.
<u>17.48.180</u>	Permit review.
<u>17.48.190</u>	Use of other base flood data.
<u>17.48.200</u>	Alteration of water courses.
<u>17.48.210</u>	Information to be obtained and maintained.
<u>17.48.220</u>	Interpretation of hazard boundary locations.
<u>17.48.230</u>	Action to remedy violations.

Article III. Provisions for Flood Hazard Reduction

<u>17.48.240</u>	Standards of construction.
<u>17.48.250</u>	Anchoring.
<u>17.48.270</u>	Elevations and floodproofing.
<u>17.48.280</u>	Standards for utilities.
<u>17.48.290</u>	Standards for subdivisions.
<u>17.48.300</u>	Standards for manufactured homes.
<u>17.48.310</u>	Standards for recreational vehicles.
<u>17.48.320</u>	Floodways.
<u>17.48.330</u>	High hazard areas.
<u>17.48.340</u>	Mudslide (i.e., mudflow) hazard areas.

17.48.350 Flood-related erosion hazard areas.

Article IV. Variance Procedure.

17.48.360 Nature of variances.

17.48.370 Authority and conditions to grant variances.

17.48.380 Special definitions.

17.48.390 Grounds for granting a variance.

17.48.400 General provisions for variances.

17.48.410 Procedure for filing and processing application for a variance.

17.48.420 Fixing date of hearing–Notice of hearing.

17.48.430 Conduct of hearing–Decision.

Article V. Appeals.

17.48.440 Authority to consider appeals.

17.48.450 Special definitions.

17.48.460 Grounds for granting appeal and related policies.

17.48.470 Procedure for filing and processing appeal.

17.48.480 Fixing date of hearing–Notice of hearing.

17.48.490 Conduct of hearing–Decision.

17.48.500 Procedure.

Article I. General Provisions

17.48.010 Statutory authorization.

The Legislature of the State of California, has in Government Code Sections 65302, 65560, and 65800, conferred upon local government units authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

17.48.020 Short title.

This chapter may be cited as the Kern County Floodplain Management Ordinance.

17.48.030 Findings of fact.

- A. The flood hazard areas of unincorporated Kern County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood proofed, elevated, or otherwise protected from flood damage, also contribute to the flood loss.

17.48.040 Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- A. To protect human life and health;
- B. To minimize expenditure of public money for costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the secondary use and development of areas of special flood hazard so as to minimize future blight areas;
- G. To ensure that potential buyers are notified that property is in an area of special flood hazard;
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions; and
- I. To comply with the requirements of the National Flood Insurance Program Regulations, Parts 59 and 60 of Title 44 of the Code of Federal Regulations hereinafter referred to as the National Flood Insurance Regulations.

17.48.050 Methods of reducing flood losses.

In order to accomplish its purposes, this chapter includes methods and provisions for:

- A. Restricting or prohibiting uses which are dangerous to health, safety, and property loss due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- D. Controlling filling, grading, dredging, and other development which may increase flood damage; and
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

17.48.060 Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

- 1. "Accessory use" means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.
- 2. "Alluvial fan" means a geomorphologic feature characterized by a cone or

- fan-shaped deposit of boulders, gravel, and fine sediments that have been eroded from mountain slopes, transported by flood flows, then deposited on the valley floors, and which is subject to flash flooding, high velocity flows, debris flows, erosion, sediment movement and deposition, and channel migration.
3. "Apex" means the point of highest elevation on an alluvial fan, which on undisturbed fans is generally the point where the major stream that formed the fan emerges from the mountain front.
 4. "Appeal" means a request for a review of the floodplain administrator's interpretation of any provision of this chapter or a request for a variance.
 5. "Area of shallow flooding" means an area designated A, AO or AH Zone on the Flood Insurance Rate Map (FIRM), or an area identified by the Floodplain Administrator. The base flood depths have either not been determined (A Zone), they range from one to three feet (AO or AH Zone), or a depth has been established by the Floodplain Administrator; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
 6. Area of special flood hazard. See "Special flood hazard area."
 7. "Backfill" means the placement of fill material within a specified depression, hole or excavation pit below the surrounding adjacent ground level as a means of improving flood water conveyance or to restore the land to the natural contours existing prior to excavation.
 8. "Base flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any one (1) given year (also called the one hundred (100) year flood).
 9. "Base flood elevation" means the water surface elevation of the base flood at a given location.
 10. "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.
 11. "Building." See "Structure."
 12. "Building Official" means the Director of the Resource Management Agency of the County of Kern or his/her designee.
 13. "Certification" by a registered professional engineer or other party does not constitute a warranty or guarantee of performance, expressed or implied. Certification of data is a statement that the data is accurate to the best of the certifier's knowledge. Certification of analyses is a statement that the analyses have been performed correctly and in accordance with sound engineering practices. Certification of structural works is a statement that the works are designed in accordance with sound engineering practices to provide protection from the base flood. Certification of as built conditions is a statement that the structure(s) has been built according to the plans being certified, is in place, and is fully functioning.
 14. "Critical feature" means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

15. "Curvilinear line" means the border on either a Flood Hazard Boundary Map or Flood Insurance Rate Map that delineates the special flood, mudslide (i.e., mudflow), and/or flood-related erosion hazard areas and consists of a curved or contour line that follows the topography.
16. "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials.
17. "Encroachment" means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures, or development into a floodplain which may impede or alter the flow capacity of a floodplain.
18. "Erosion" means the process of the gradual wearing away of land masses. This peril is not per se covered under the National Flood Insurance Program.
19. "Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.
20. "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
21. "Fill" means the placement of fill material at a specified location to bring the ground surface up to a desired elevation.
22. "Fill material" can be natural sand, dirt, soil, or rock. For the purposes of floodplain management, fill material may include concrete, cement, soil cement, brick, or similar material as approved by the floodplain administrator on a case-by-case basis.
23. "Flood, flooding, or flood water" means: (1) a general and temporary condition of partial or complete inundation of normally dry land areas from (a) the overflow of flood waters, (b) the unusual and rapid accumulation or runoff of surface waters from any source, and/or (c) mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (1)(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current; and (2) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1)(a) of this definition.

24. "Flood Boundary and Floodway Map (FLOODWAY)" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of flood hazard and the floodway.
25. "Flood elevation determination" means a determination by the Federal Insurance Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent (1%) or greater chance of occurrence in any given year.
26. "Flood elevation study" means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.
27. "Flood Hazard Boundary Map (FHBM)" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated the areas of flood hazard.
28. "Flood Hazard Evaluation" means an official report provided by the floodplain administrator that includes, but is not limited to, the elevation requirement, depth of footing requirement, and Certification of Elevation requirement for any building permits issued by the building official in a special flood hazard area.
29. "Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
30. "Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map (FIRM), the Flood Boundary Floodway Map (FBFM), and the water surface elevation of the base flood.
31. "Flood protection system" means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a special flood hazard and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees, or dikes. These specialized flood modifying works are those constructed in accordance with sound engineering standards.
32. "Floodplain administrator" means the individual appointed to administer and enforce the floodplain management regulations.
33. "Floodplain or flood-prone area" means any land area susceptible to being inundated by water from any source (see definition of "flooding").
34. "Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited to, emergency preparedness plans, flood control works, and floodplain management regulations as administered by various Federal, State and County Agencies.
35. "Floodplain management regulations" mean the zoning ordinances,

- subdivision regulations, building codes, health regulations, special purpose ordinances (such as the Floodplain Management Ordinance or Grading Code), and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.
36. "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
 37. "Flood-related erosion" means the collapse or subsidence of land caused by the flow of water from a severe storm, or by an unanticipated force of nature, such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding.
 38. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height, usually one foot. In some instances, the cumulative increase allowed for the Floodway may be less than one (1) foot. Also referred to, as "regulatory floodway" or "designated floodway."
 39. "Floodway encroachment line" means the lines marking the limits of floodways on federal, state, and local floodplain maps.
 40. "Floodway fringe" means the area of a floodplain on either side of the designated floodway where encroachment may be permitted.
 41. "Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.
 42. "Habitable floor" means any floor usable for living purposes, which includes working, sleeping, eating, recreation, or a combination thereof. For floodplain management regulation purposes, Habitable Floor and Lowest Floor will share the same definition.
 43. "High hazard area" means those portions on the alluvial fan subject to active erosional and depositional conditions. These areas are where the flood hazard potential is too severe for standard economic flood protection plans.
 44. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction, upstream and next to the proposed walls of a structure.
 45. "Historic structure" means any structure that is: (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered

- historic district; (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (a) by an approved state program as determined by the Secretary of the Interior, or (b) directly by the Secretary of the Interior in states with approved programs.
46. "Landfill" means a permitted location for the disposal, placement, or dumping of garbage, trash, debris, junk, or waste material.
 47. "Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.
 48. "Levee system" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accord with sound engineering practices.
 49. "Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.
 50. "Manufactured home" means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term manufactured home does not include a recreational vehicle.
 51. "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for sale or rent.
 52. "Market Value" shall be determined by estimating the cost to replace the structure in new condition and adjusting that cost figure by the amount of depreciation that has accrued since the structure was constructed. The cost of replacement of the structure shall be based on a square foot cost factor determined by reference to a building cost estimating guide recognized by the building construction industry. The amount of depreciation shall be determined by taking into account the age and physical deterioration of the structure and functional obsolescence as approved by the floodplain administrator, but shall not include economic or other forms of external obsolescence. Use of replacement costs or accrued depreciation factors different from those contained in recognized building cost estimating guides may be considered only if such factors are included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences.
 53. "Mean sea level" means, for the purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other

datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

54. "Mudslide" (i.e., mudflow) describes a condition where there is a river, flow, or inundation of liquid mud down a hillside usually as a result of a dual condition of loss of brush cover and the subsequent accumulation of water on the ground preceded by a period of unusually heavy or sustained rain.
55. "New construction" means, for floodplain management purposes, structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by this community and includes any subsequent improvements to such structures.
56. "New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.
57. "Nonresidential building" means and includes, but is not limited to, small business concerns, churches, schools, nursing homes, farm buildings (including grain bins and silos), government buildings, mercantile structures, industrial plants, and warehouses.
58. "Obstruction" means and includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across, or projecting into any watercourse which may alter, impede, retard, or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water or its likelihood of being carried downstream.
59. "One hundred year flood" or "100-year flood" means a flood which has a one percent annual probability of being equaled or exceeded in any given year. It is identical to the base flood, which will be the term used throughout this chapter.
60. "Person" means and includes any individual or his agent, firm, group of individuals, partnership, association or corporation, or agent of the aforementioned groups, or any other entity including the State or its agencies or political subdivisions.
61. "Principal structure" means a structure used for the principal use of the property as distinguished from an accessory use.
62. "Recreational vehicle" means a vehicle which is: (1) built on a single chassis; (2) four hundred (400) square feet or less when measured at the largest horizontal projection; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For floodplain management purposes, the term recreational vehicle also includes, but is not limited to, park trailers, travel trailers, and other similar vehicles.

63. "Remedy a violation" means to bring the structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing State or Federal financial exposure with regard to the structure or other development.
64. "Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
65. "Scour depth" means the distance below prevailing ground resulting from the erosive action of running water which temporarily or permanently excavates and carries away material from the prevailing ground or channel bed during flooding.
66. "Sheet flow area." See "Area of shallow flooding."
67. "Special flood hazard area (SFHA)" means an area having special flood or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, or identified by the floodplain administrator.
68. "Start of construction" means and includes substantial improvement and other proposed new development, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
69. "Structure" means a roofed building with one or more walls, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.
70. "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure by reconstruction, rehabilitation, addition, or other improvement to its before damage condition equals or exceeds fifty percent (50%) of the market value of the structure before the damage occurred.
71. "Substantial improvement" means any repair, reconstruction, rehabilitation, addition, or other proposed new development or improvement the cumulative

replacement cost (including but not limited to materials and labor) of which equals or exceeds fifty percent (50%) of the current market value of the structure before the start of construction of the initial improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. This term does not, however, include any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

- 72. "Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.
- 73. "Violation" means the failure of a structure or other development to be fully compliant with this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.
- 74. "Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified) for floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.
- 75. "Watercourse" means a lake, river, creek, stream, wash, arroyo, channel, or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

17.48.070 Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazards, areas of flood-related erosion hazards, and areas of mudslide (i.e., mudflow) hazards within the jurisdiction of unincorporated Kern County.

17.48.080 Basis for establishing the areas of special flood hazard.

The areas of special flood hazard, areas of flood-related erosion hazards, and areas of mudslide (i.e., mudflow) hazards are as listed below:

- A. Those identified by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency (FEMA) in the scientific and engineering report entitled Flood Insurance Study, Kern County, California, Unincorporated Areas dated September 27, 1994, with accompanying Flood Insurance Rate Maps and Flood Boundary and Floodway Maps, and all subsequent amendments and/or revisions.
- B. Those included in the Department of Water Resources, Division of Flood Management, State of California, Reclamation Board, Kern River Designated Floodway Maps for the following reaches:
 - 1. Tupman to Golden State Highway, April 19, 1976.
 - 2. Tupman to Tulare Lake, November 12, 1976.
 - 3. Golden State Highway to Lake Isabella Dam, June 20, 1978.
 - 4. Lake Isabella to Tulare County, November 19, 1981.
 - 5. Lake Isabella to Sequoia National Forest, November 19, 1981.

- C. Those included on parcel and tract maps within unincorporated Kern County.
- D. Those flood hazard studies prepared by, or for, the floodplain administrator.

The flood, erosion, and mudslide hazards identified by the above maps and/or studies are hereby adopted by reference and declared to be a part of this chapter. These maps and/or studies are on file at the office of the floodplain administrator as established in Section 17.48.160. These maps and/or studies may be revised and amended from time to time and shall go into effect thereafter pursuant to the provisions of the applicable federal, state, or local law.

As a basis for establishing areas of special flood, erosion, and mudslide hazards other than those listed above and imposing the flood protection requirements of this chapter, the floodplain administrator, as established in Section 17.48.160, or his authorized agent, shall obtain, review, and reasonably utilize the best flood data available from any source (federal, state, or other), such as high water marks, floods of record, or private engineering studies, maps, and reports.

17.48.090 Compliance.

No structure or land shall hereafter be constructed, located, extended, converted, altered, or substantially improved nor shall land be graded for development without full compliance with the terms of this chapter and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein shall prevent the floodplain administrator from taking such lawful action as is necessary to prevent or remedy any violation.

17.48.100 Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

17.48.110 Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under State statutes.

17.48.120 Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards, areas of flood-related erosion hazards, and areas of mudslide (i.e., mudflow) hazards, or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of

Kern County, any officer or employee thereof, or the Federal Insurance Administration, Federal Emergency Management Agency, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

17.48.130 Severability.

This chapter and the various parts thereof are hereby declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole or any portion thereof other than the section so declared to be unconstitutional or invalid.

Article II. Administration

17.48.140 Establishment of development permit.

A development permit shall be obtained before any construction or other development begins within any area of special flood hazards, areas of flood-related erosion hazards, or areas of mudslide (i.e., mudflow) established in Section 17.48.080. Application for a development permit shall be made on forms furnished by the floodplain administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- A. Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures; in areas of shallow flooding, the elevation of highest adjacent upstream grade and proposed elevation of lowest floor of all structures;
- B. Proposed elevation in relation to mean sea level to which any structure will be floodproofed;
- C. All appropriate certifications listed in Section 17.48.210 of this chapter; and
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

17.48.150 Fees.

Subject to approval by the Board of Supervisors, the floodplain administrator may adopt and charge a reasonable schedule of fees for flood hazard evaluations, flood hazard evaluation updates, certification of elevation, variance to flood requirement, appeal to higher authority, and for the performance of special services by the Engineering and Survey Services Department in administering and enforcing this title.

17.48.160 Designation of the floodplain administrator.

The director of the Resource Management Agency or authorized designee agent acting in the director's behalf is hereby appointed to administer and implement this chapter by granting or denying development permits in accordance with its provisions.

17.48.170 Duties and responsibilities of the floodplain administrator.

The duties and responsibilities of the floodplain administrator shall include, but not be limited to those set out in Sections 17.48.180 through 17.48.230.

17.48.180 Permit review.

- A. Review of all permits to determine that the permit requirements of this chapter have been satisfied;
- B. All other state and federal permits required to fulfill the purpose of Section 17.48.040 have been obtained;
- C. The site, subdivision or other proposed new development is reasonably safe from flooding; and
- D. The proposed development does not adversely affect the carrying capacity of the special flood hazard area. For purposes of this chapter, in areas where Floodways have not been designated, adversely affects means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood more than one foot at any point. See also Section 17.48.320 (Floodways).

17.48.190 Use of other base flood data.

When base flood elevation data has not been provided in accordance with Section 17.48.080, the floodplain administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, in order to administer Article III. Any such information shall be subject to review and approval by the floodplain administrator.

17.48.200 Alteration of watercourses.

Whenever a watercourse is to be altered or relocated:

- A. Notify adjacent communities and the California Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration, Federal Emergency Management Agency;
- B. Require that the flood carrying capacity of the altered or relocated portion of said watercourse be maintained.

17.48.210 Information to be obtained and maintained.

Obtain and maintain for public inspection and make available as needed:

- A. The certification required in Section 17.48.270(A) (floor elevations);
- B. The certification required in Section 17.48.270(B) (elevations in areas of shallow flooding);
- C. The certification required in Section 17.48.270(C) (elevation or floodproofing of nonresidential structures);
- D. The certification required in Section 17.48.270(D) (wet floodproofing standard);
- E. The certification required in Section 17.48.290(B) (subdivision standards);

- F. The certification required in Section 17.48.320(A) (floodway encroachments);
- G. The certification required in Section 17.48.330(A) (high hazard areas);
- H. The reports required in Section 17.48.340 (mudslide areas).
- I. The information required in Section 17.48.350 (flood-related erosion hazard areas).

17.48.220 Interpretation of hazard boundary locations:

Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards, areas of flood-related erosion hazards, or areas of mudslide (ie., mudflow); (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Article V .

17.48.230 Action to remedy violations.

Take action to remedy violations of this chapter as specified in Section 17.48.090 herein.

Article III. Provisions for Flood Hazard Reduction.

17.48.240 Standards of construction.

In all areas of special flood hazard, the following standards set out in Sections 17.48.250 through 17.48.350 are required.

17.48.250 Anchoring.

- A. All new construction, substantial improvements and other proposed new development shall be adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- B. All manufactured homes shall meet the anchoring standards of Section 17.48.300.

17.48.260 Construction materials and methods.

- A. All new construction, substantial improvements and other proposed new development shall be constructed with materials and utility equipment resistant to flood damage.
- B. All new construction, substantial improvements and other proposed new development shall be constructed using methods and practices that minimize flood damage.
- C. All new construction, substantial improvements and other proposed new development shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- D. Require within special flood hazard areas adequate drainage paths around structures on slopes to guide flood waters around and away from proposed

structures.

17.48.270 Elevations and floodproofing.

- A. Except for areas of shallow flooding, new construction, substantial improvement and other proposed new development of any structure in a special flood hazard area shall have the lowest floor, including basement, elevated one (1) foot above the base flood elevation. Nonresidential structures may meet the standards in Subsection 17.48.270(C) of this section. Qualifying uninhabitable attached garages or storage rooms and accessory structures (such as a shed or detached garage) may meet the requirements of Subsection 17.48.270(E). Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered professional engineer, architect, or licensed surveyor, or verified by the building official to be properly elevated. Such certification or verification shall be provided to the floodplain administrator.
- B. For areas of shallow flooding, new construction, substantial improvement and other proposed new development of any structure in a special flood hazard area shall have the lowest floor, including basement, elevated at least one (1) foot above the shallow flooding depth or depth number specified in feet on the Flood Insurance Rate Map (FIRM), or at least two (2) feet if no depth number is specified. The elevation is to be measured from the highest adjacent grade upstream of the structure. Nonresidential structures may meet the standards in Subsection 17.48.270(C). Qualifying uninhabitable attached garages or storage rooms and accessory structures (such as a shed or detached garage) may meet the requirements of Subsection 17.48.270(E). Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered professional engineer, architect, or licensed surveyor, or verified by the building official to be properly elevated. Such certification or verification shall be provided to the floodplain administrator.
- C. Nonresidential construction shall either be elevated in conformance with Subsections 17.48.270(A) or (B) of this section or, together with attendant utility and sanitary facilities:
 - 1. Be flood proofed one (1) foot above the base flood level so that the structure is watertight with walls substantially impermeable to the passage of water;
 - 2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - 3. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the floodplain administrator.
- D. Require, for all new construction, substantial improvement and other proposed new development, that fully enclosed areas below the lowest floor that are usable solely for the parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this

requirement must be either certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

1. Either a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding (as indicated by the elevation requirements of this section) shall be provided, the bottom of the openings shall be no higher than one (1) foot above grade (openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater); or
 2. Be certified to comply with a local floodproofing standard approved by the Federal Insurance Administration, Federal Emergency Management Agency.
- E. For an uninhabitable attached garage or storage room on a residential structure usable solely for parking of vehicles, building access or storage in an area other than a basement, or for accessory structures (such as a shed or detached garage), not representing a significant investment as determined by the floodplain administrator in exercise of his reasonable discretion, may be allowed to have the finished floor of the attached garage, storage room or accessory structure built below the base flood elevation without floodproofing, provided that conditions shall be imposed relating to the construction and use of such accessory structure, as follows:
1. Such structure shall be firmly anchored to prevent flotation, collapse, or lateral movement which may result in damage to other property.
 2. Such structure shall be constructed with materials resistant to flood damage.
 3. Such structure shall be constructed with utilities, if any (e.g., electrical, plumbing, etc.), resistant to flood damage. Utilities, if any, should be elevated or flood proofed.
 4. Such structure shall be constructed by methods and practices that minimize flood damage. The structure should be constructed and placed on the building site so as to offer the minimum resistance to the flow of flood waters.
 5. The structure shall not be used for human habitation, including, but not limited to, placement of laundry facilities, workshops, or other similar uses.
- F. Manufactured homes shall also meet the standards in Section 17.48.300.

17.48.280 Standards for utilities.

- A. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters.
- B. On-site waste disposal systems shall be designed and located to avoid impairment to them, or contamination from them, during flooding.
- C. Other utilities are addressed at 17.48.260 and 17.48.290.

17.48.290 Standards for subdivisions.

- A. All preliminary subdivision proposals shall identify the flood hazard areas and

- the elevation of the base flood consistent with this chapter.
- B. All final subdivision plans will provide the elevations of proposed structure(s), and grading for pads. If the site is filled above the base flood elevations, the final pad elevation shall be certified by a registered professional engineer or surveyor and the certification provided to the floodplain administrator.
 - C. All subdivision proposals shall:
 - 1. be consistent with the need to minimize flood damage; and
 - 2. have public utilities and facilities, such as sewer, gas, electrical, and water systems, located and constructed to minimize flood damage; and
 - 3. provide adequate drainage to reduce exposure to flood hazards.

17.48.300 Standards for manufactured homes.

- A. All manufactured homes that are placed or substantially improved within a special flood hazard area either outside of a manufactured home park or subdivision, in a new manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood shall:
 - 1. Be elevated on a permanent foundation such that the top of the steel frame is one (1) foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement, or
 - 2. If the manufactured home is to be placed on an earth pad, the finished pad elevation shall be one (1) foot above the base flood elevation and the manufactured home must be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.
- B. All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision in a special flood hazard area that are not subject to the provisions of Subsection 17.48.300(A) shall be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement and elevated so that either:
 - 1. The top of the steel frame, or the top of the finished pad when an earth pad is used to meet the elevation requirements, is one (1) foot above the base flood elevation, or
 - 2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade.

17.48.310 Standards for recreational vehicles.

All recreational vehicles placed on sites within areas of special flood hazard will either:

- A. Be on site for fewer than one hundred eighty (180) consecutive days;
- B. Be fully licensed and ready for highway use; or
- C. Meet the permit requirements of Article III of this chapter and the elevation and anchoring requirements for manufactured homes in Section 17.48.300.

17.48.320 Floodways.

Located within areas of special flood hazard, established in Section 17.48.080, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- A. Prohibit encroachments, including fill, new construction, substantial improvements, and other proposed new development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- B. If Subsection 17.48.320(A) is satisfied, all new construction, substantial improvements, and other proposed new development shall comply with all other applicable flood hazard reduction provisions of this chapter.

17.48.330 High hazard areas.

Located within areas of special flood hazard on alluvial fans, established in Section 17.48.080, are well-defined watercourses and overflow channels which are designated as severe flood hazard areas. Since the severe flood hazard area is an extremely hazardous area due to the severe and erratic lateral and vertical erosion potential from high velocity flood waters, the following provisions apply:

- A. Prohibit encroachments, including fill, new construction, substantial improvements, and other proposed new development unless any flood protection measures are designed and certified by a registered professional engineer or architect as providing adequate slope, scour, and elevation protection, and that any encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge within the severe flood hazard area.
- B. If Subsection 17.48.330(A) is satisfied, all new construction, substantial improvements, and other proposed new development shall comply with all other applicable flood hazard reduction provisions of this chapter.

17.48.340 Mudslide (i.e., Mudflow) hazard areas.

- A. The floodplain administrator shall review permits for proposed construction or other proposed new development to determine if it is proposed within a mudslide area as known to the community.
- B. Permits shall be reviewed to determine that the proposed development is reasonably safe from mudslide hazards. Factors to be considered in making this determination include, but are not limited to:
 - 1. The type and quality of soils;
 - 2. Evidence of groundwater or surface water problems;
 - 3. The depth and quality of any fill;
 - 4. The overall slope of the site; and
 - 5. The weight that any proposed development will impose on the slope.
- C. Within areas which have mudslide hazards, the following requirements apply:
 - 1. A site investigation and further review shall be made by persons qualified

- in geology and soils engineering;
2. proposed new development shall be adequately designed and protected against mudslide damages;
 3. The proposed grading, excavations, new construction, substantial improvements, and other proposed new development do not aggravate the existing hazard by creating either on-site or off-site disturbances; and
 4. Drainage, planting, watering, and maintenance shall not endanger slope stability.

17.48.350 Flood-related erosion hazard areas.

- A. The floodplain administrator shall review all permits for proposed construction and other proposed new development within all flood-related erosion hazard areas as known to the community.
- B. Such permits shall be reviewed to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard.
- C. If a proposed improvement is found to be in the path of flood-related erosion or would increase the erosion hazard, such improvement shall be relocated or adequate protective measures shall be taken to avoid aggravating the existing erosion hazard.

Article IV. Variance Procedure

17.48.360 Nature of variances.

The variance criteria set forth in this Article are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. In general, a properly issued variance is granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the Board of Supervisors of Kern County and the floodplain administrator to help protect its citizens from flooding. This need is so compelling, and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or other requirements in this chapter are quite rare. Therefore, the variance guidelines provided in this chapter are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

17.48.370 Authority and conditions to grant variances.

The floodplain administrator is empowered to grant variances from the terms of one or more regulations in this chapter in the following cases:

- A. Variances may be issued for new construction, substantial improvements and

other proposed new development to be erected on a lot of one-half (1/2) acre or less in size which is contiguous to and surrounded by lots with existing structures constructed below the regulatory flood elevation, providing that the procedures of Articles II and III of this chapter have been fully considered. As lot size increases beyond one-half (1/2) acre, the technical justification required for issuing the variance increases.

- B. Variances may be issued for the repair or rehabilitation of Historic Structures (as defined in Article I of this chapter) upon determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character of the structure.
- C. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- D. Variances may be issued for new construction, substantial improvement and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of Subsections 17.48.370(A) through (C) and Subsection 17.48.390(B) are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety. Upon consideration of the factors of Subsection 17.48.390(A) and the purposes of this chapter the floodplain administrator may impose other reasonable conditions on any variance mentioned in this section as deemed necessary to further the purposes of this chapter.

17.48.380 Special definitions.

For the purpose of this article, certain terms and words are defined as provided in this section:

- A. "Applicant" means a person who has applied for a development permit or for approval of a subdivision map, parcel map, or variance.
- B. "Application" means an application for a variance under this section.
- C. "Board" means the Board of Supervisors of Kern County.
- D. "Clerk" means the Clerk of the Board.
- E. "Fraud and victimization" means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the floodplain administrator will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty (50) to one hundred (100) years. Buildings that are permitted to be constructed below the elevation requirements of Section 17.48.260 are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.
- F. "Hardship" means the hardship that would result from a failure to grant the requested variance. The floodplain administrator requires that the variance be

exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as exceptional hardships. All of these problems can be resolved through other means, without granting a variance. This is so even if the alternative means are more expensive or complicated than building with a variance, or if they require the property owner to put the parcel to a different use than originally intended, or to build elsewhere.

- G. "Minimum necessary" means the minimum necessary to afford relief to the applicant of a variance with a minimum deviation from the requirements of this chapter. In the case of variances to an elevation requirement, this means the floodplain administrator need not grant permission for the applicant to build at grade, for example, or even to whatever elevation the applicant proposes, but only to that level that the floodplain administrator believes will both provide relief and preserve the integrity of this chapter.
- H. Public Safety and Nuisances means the granting of a variance must not result in additional threats to public safety or create nuisances. This ordinance is intended to help protect the health, safety, well-being, and property of local citizens. This is a long range community effort made up of a combination of approaches such as adequate drainage systems, warning and evacuation plans, and keeping new property above the flood levels. These long-term goals can only be met if exceptions to the requirements of this chapter are kept to a bare minimum.
- I. Responsible Authority means the officer or body with the duty of issuing any permit or rendering any approval required under this chapter which is subject to the regulations as to which a variance is sought.

17.48.390 Grounds for granting variance.

- A. In passing upon an application for a variance, the floodplain administrator shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:
 - 1. The danger that materials may be swept onto other lands to the injury of others;
 - 2. The danger of life and property due to flooding or erosion danger;
 - 3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;
 - 4. The importance of the services provided by the proposed facility to the community;
 - 5. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - 6. The compatibility of the proposed use with existing and anticipated development;
 - 7. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

8. The safety of access to the property in time of flood for ordinary and emergency vehicles;
 9. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site;
 10. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water system, and streets and bridges.
- B. The applicant for a variance shall show at the hearing thereon and before granting a variance, the floodplain administrator shall find:
1. That there is a good and sufficient cause for variance.
 2. That failure to grant the variance would result in exceptional hardship to the applicant.
 3. That the granting of such variance and any construction, improvement, development, or other action which may be undertaken under it will not:
 - a. Result in any increased flood heights, additional threats to the public safety, or extraordinary public expense;
 - b. Create any nuisance;
 - c. Cause fraud on or victimization of the public; or
 - d. Conflict with any other ordinance or regulation of the County of Kern.
 4. That the extent of the variance is the minimum necessary to afford relief, considering the flood hazard.
- C. It is recognized that, under Section 60.6(a)(6) of the National Flood Insurance Program Regulations, the County is required to make a biennial report, or as requested by the Federal Insurance Administrator, and report therein any variances which have been granted, and that said Administrator is empowered to review the findings justifying the granting of variances, and that if said Administrator determines that such variances show a pattern inconsistent with the objectives of sound floodplain management, said Administrator may take action under Section 59.24(b) of said Regulations to suspend eligibility of this County from the National Flood Insurance Program.
- D. It is also recognized that, under Section 60.6(a) of said Regulations, the issuance of a variance is only for the purposes of application of the floodplain management regulations in this chapter, and that flood insurance rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance, and that construction of a structure below the regulatory flood elevation, or otherwise inconsistently with the objectives of sound floodplain management, may result in flood insurance premium rates on such structure beyond the means of its owner, which are not modified by the granting of a variance.
- E. For the reasons mentioned in Subsections (C) and (D) above, it shall be the policy of Kern County to give the provisions of this chapter a conservative construction and application, with the objective of avoiding, wherever feasible, the granting of any variance which would be inconsistent with the objectives of sound floodplain management or which may result in rendering residents of Kern County ineligible for flood insurance or which might place flood insurance beyond the means of the owner of a structure constructed under

such variance.

17.48.400 General provisions for variances.

- A. If an application for a variance is filed before the responsible authority has acted on a related application for development permit, subdivision map, or parcel map, it shall not make a decision thereon nor issue such permit or approve such map until the floodplain administrator has made his determination with respect to the variance. By filing such application for variance, the applicant shall be deemed to have consented to extension of the time within which action is required to be taken on such application for permit or map for a period of at least thirty (30) days from and after the date of the floodplain administrator's determination with respect to the variance.
- B. An application for a variance may be filed prior to the filing of an application for a development permit or submission of proposed subdivision map or parcel map, but in such case, the applicant for the variance shall furnish with the application for variance such information as the floodplain administrator may deem sufficient, in his reasonable discretion, to permit him to fully understand the application for variance and its effect in the context of the proposed development or subdivision, including, but not confined to, environmental information.
- C. If the floodplain administrator determines that insufficient information has been provided to comply with any rules adopted pursuant to subsection (D) below or to permit him to fully understand the application for variance and its effect in the context of the proposed development or subdivision (including, but not confined to, its environmental effect), he is empowered to make an order requiring the applicant to furnish such information and to delay or continue the hearing until a reasonable time after such information has been furnished.
- D. The floodplain administrator may, from time to time, adopt reasonable rules relating to the information to be furnished by the applicant for a variance.

17.48.410 Procedure for filing and processing application for variance.

An application shall be filed and processed in the following manner:

- A. An application for a variance shall be filed with the floodplain administrator and shall be in writing on such form as the floodplain administrator may, from time to time, approve.
- B. An application shall be signed by the applicant or his authorized agent.
- C. The application shall identify the regulation or regulations as to which the variance is applicable and shall briefly state the facts which give rise to a good and sufficient cause for the variance. The application shall set forth the address for purposes of giving notice and the telephone number of the applicant or his authorized agent.

17.48.420 Fixing date of hearing; Notice of hearing.

- A. The floodplain administrator shall fix a date and time for hearing on such variance which shall be within fifteen (15) days after the filing of such

- application unless the applicant consents to a delay or continuance.
- B. The floodplain administrator shall cause notice to be given of the date, time, and place of the hearing on such application for variance at least one (1) week prior thereto as follows:
 - 1. By mailing a copy of such notice by ordinary U.S. mail to the address set forth in the application;
 - 2. By mailing a copy of such notice to any person who has requested it and who has furnished the floodplain administrator with a stamped, pre-addressed envelope for such purpose;
 - 3. By sending a copy of such notice to any other responsible authority; and
 - 4. By posting a copy of such notice on the bulletin board adjacent to the Chambers of the Board.
 - C. As an alternative to the notice required by subparagraphs (1), (2), or (3) of this section, the floodplain administrator may give such notice by causing personal delivery of a copy to the person entitled thereto not less than seventy-two (72) hours before the time fixed for hearing.

17.48.430 Conduct of hearing; Decision.

- A. The floodplain administrator shall hear the application for variance and consider evidence presented by the applicant, the responsible authority, and any interested person at the time and place fixed in the notice for hearing.
- B. With consent of the applicant, the floodplain administrator may continue the hearing from time to time.
- C. Within fifteen (15) days after conclusion of the hearing, the floodplain administrator shall declare his findings and decision and shall promptly transmit and post copies of same in the manner provided for notices in Subsection 17.48.420(B) above.
- D. If the variance is granted, the floodplain administrator shall also send to the applicant, in the manner mentioned in Section 17.48.420(C) above, a notice over the signature of the floodplain administrator that:
 - 1. The issuance of a variance to construct a structure below the regulatory flood elevation will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25) for one hundred dollars (\$100) of insurance coverage;
 - 2. Such construction below the regulatory flood elevation increases risk to life and property; and
 - 3. Any other relevant information prescribed by the floodplain administrator; and
 - 4. A copy of such notice shall be maintained with the record of the variance action mentioned in paragraph (E) following.
 - 5. A copy of such notice shall be recorded by the floodplain administrator in the Office of the Kern County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
- E. The floodplain administrator shall maintain a record of all variance actions by the floodplain administrator or by the Board of Supervisors in connection with any appeal to it relating to a variance. Such record shall include the findings

or other justifications for issuance of each variance. The floodplain administrator shall also report each variance issued in the annual report submitted to the Federal Insurance Administration, Federal Emergency Management Agency.

- F. Action or non-action of the floodplain administrator on an application for variance shall be subject to appeal under Article V.

Article V. Appeals

17.48.440 Authority to consider appeals.

The Board of Supervisors is empowered to hear appeals and grant relief thereon as provided in this article.

17.48.450 Special definitions.

For the purpose of this article, certain terms and words are defined as provided in this paragraph:

- A. Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this chapter including the application for a hearing on appeal as well as the appeal process.
- B. Applicant means a person who has applied for a development permit or for approval of a subdivision map, parcel map, or variance.
- C. Board means the Board of Supervisors of Kern County.
- D. Responsible Authority means the officer or body with the duty of issuing any permit or rendering any approval or which has a duty, power, or discretion under this chapter, which is subject of the appeal.

17.48.460 Grounds for granting appeal and related policies.

- A. The appellant shall show at the hearing thereon, and before granting relief on appeal the Board shall find:
 - 1. Interpretation by the responsible authority of one or more regulations mentioned in this chapter was unreasonable or arbitrary; or
 - 2. Action taken or a decision by the responsible authority under this chapter was unreasonable or arbitrary; or
 - 3. Failure to act by the responsible authority pursuant to this chapter was unreasonable or arbitrary.
- B. The Board may refuse to grant relief on appeal with respect to any matter which should have been preliminarily considered under Article IV as a variance application.

17.48.470 Procedure for filing and processing appeal.

- A. Any applicant who is dissatisfied with any action, decision, or non-action of a responsible authority may appeal to the Board at any time. Any interested person adversely affected by any decision of a responsible authority may appeal to the Board within fifteen (15) days after such decision.
- B. Each appeal shall be filed with the responsible agency and shall be in writing on such form as the Board may, from time to time, approve or if none, then on

- a form prescribed by the responsible authority.
- C. Each appeal shall be signed by the appellant or his authorized agent.
 - D. The appeal shall identify the application for development permit or the subdivision or parcel map as to which issuance or approval is sought and shall identify the regulation which relates thereto and shall briefly state the facts which give rise to good and sufficient cause for granting relief on appeal. The appellant shall set forth the address for purposes of giving him notice and the telephone number of the appellant or his authorized agent.
 - E. If in addition to the responsible authority with which the appeal is filed, the action or non-action of any other responsible authority is also subject to such appeal, the appeal shall identify each such other responsible authority, in which case the one with which such application is filed shall promptly send a copy of it to each such other responsible authority. The Board is empowered to refuse to grant any appeal relating to the action or non-action of a responsible authority if the appeal failed to identify it.
 - F. The responsible authority shall promptly forward such appeal to the Clerk.

17.48.480 Fixing date of hearing; Notice of hearing.

The Clerk shall fix a date and time for a hearing on such appeal which shall be within fifteen (15) days after the filing of the appeal or at the next succeeding regular meeting of the Board after fifteen (15) days unless the applicant and appellant (if one other than the applicant) join in consent to a delay or continuance. If the Clerk fails to fix a date and time for hearing, the Board shall do so. The Clerk shall cause notice to be given of the date, time, and place of the hearing on the appeal at least one (1) week prior thereto, as follows:

- A. By mailing a copy of such notice to the appellant at the address set forth in the appeal, by ordinary U.S. mail;
- B. By mailing a copy of such notice to the applicant (if one other than the appellant) by ordinary U.S. mail;
- C. By mailing a copy of such notice to any person who has requested it and who has furnished the Clerk with a stamped, pre-addressed envelope for such purposes; and
- D. By posting a copy of such notice on the bulletin board adjacent to the Chambers of the Board.

17.48.490 Conduct of Hearing—Decision.

- A. The Board shall hear the appeal and consider evidence presented by the appellant, the responsible authority, and any interested person at the time and place fixed in the notice of hearing.
- B. With the consent of the appellant, the Board may continue the hearing from time to time.
- C. Within fifteen (15) days after conclusion of the hearing, the Board shall declare its findings, if any, and decision. The Clerk shall promptly transmit and post copies of same in the manner provided for notices in Section 17.48.480.
- D. If relief on appeal is granted, the floodplain administrator shall send to the applicant, in the manner mentioned in Subsection 17.48.420(C), a notice over

the signature of the floodplain administrator that:

1. The issuance of a variance to construct a structure below the regulatory flood elevation will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25) for one hundred dollars (\$100) of insurance coverage;
 2. Such construction below the regulatory flood elevation increases risk to life and property; and
 3. Any other relevant information prescribed by the floodplain administrator; and
 4. A copy of such notice shall be maintained with the record of the variance action mentioned in subparagraph (D) following.
 5. A copy of such notice shall be recorded by the floodplain administrator in the Office of the Kern County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
- D. The clerk shall maintain a record of all actions taken by the Board on appeals.

17.48.500 Precedence.

This chapter shall take precedence over less restrictive conflicting ordinances or parts of ordinances. The Board of Supervisors of the County of Kern may, from time to time, amend this chapter to reflect any and all changes in the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. Sections 4001 through 4128 or in the National Flood Insurance Program Regulations. The regulations of this chapter are intended to be in compliance with the National Flood Insurance Program Regulations, Parts 59 and 60 of Title 44 of the Code of Federal Regulations.

BD:wl
#84597
02.2750
cc20022086

[BID](#)

[Table of Contents](#)

[ESS](#)